

Introduced by Senator Aanestad

February 18, 2010

An act to amend Section 12072 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

SB 1165, as introduced, Aanestad. Firearms.

Existing law generally regulates firearms transfers by persons who are not licensed firearms dealers.

This bill would make a technical, nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12072 of the Penal Code is amended to
2 read:
3 12072. (a) (1) No person, corporation, or firm shall knowingly
4 supply, deliver, sell, or give possession or control of a firearm to
5 any person within any of the classes prohibited by Section 12021
6 or 12021.1.
7 (2) No person, corporation, or dealer shall sell, supply, deliver,
8 or give possession or control of a firearm to any person whom he
9 or she has cause to believe to be within any of the classes
10 prohibited by Section 12021 or 12021.1 of this code or Section
11 8100 or 8103 of the Welfare and Institutions Code.

1 (3) (A) No person, corporation, or firm shall sell, loan, or
2 transfer a firearm to a minor, nor sell a handgun to an individual
3 under 21 years of age.

4 (B) Subparagraph (A) shall not apply to or affect those
5 circumstances set forth in subdivision (p) of Section 12078.

6 (4) No person, corporation, or dealer shall sell, loan, or transfer
7 a firearm to any person whom he or she knows or has cause to
8 believe is not the actual purchaser or transferee of the firearm, or
9 to any person who is not the person actually being loaned the
10 firearm, if the person, corporation, or dealer has either of the
11 following:

12 (A) Knowledge that the firearm is to be subsequently loaned,
13 sold, or transferred to avoid the provisions of subdivision (c) or
14 (d).

15 (B) Knowledge that the firearm is to be subsequently loaned,
16 sold, or transferred to avoid the requirements of any exemption to
17 the provisions of subdivision (c) or (d).

18 (5) No person, corporation, or dealer shall acquire a firearm for
19 the purpose of selling, transferring, or loaning the firearm, if the
20 person, corporation, or dealer has either of the following:

21 (A) In the case of a dealer, intent to violate subdivision (b) or
22 (c).

23 (B) In any other case, intent to avoid either of the following:

24 (i) The provisions of subdivision (d).

25 (ii) The requirements of any exemption to the provisions of
26 subdivision (d).

27 (6) The dealer shall comply with the provisions of paragraph
28 (18) of subdivision (b) of Section 12071.

29 (7) The dealer shall comply with the provisions of paragraph
30 (19) of subdivision (b) of Section 12071.

31 (8) No person shall sell or otherwise transfer his or her
32 ownership in a handgun unless the firearm bears either:

33 (A) The name of the manufacturer, the manufacturer's make or
34 model, and a manufacturer's serial number assigned to that firearm.

35 (B) The identification number or mark assigned to the firearm
36 by the Department of Justice pursuant to Section 12092.

37 (9) (A) No person shall make an application to purchase more
38 than one handgun within any 30-day period.

39 (B) Subparagraph (A) shall not apply to any of the following:

40 (i) Any law enforcement agency.

1 (ii) Any agency duly authorized to perform law enforcement
2 duties.

3 (iii) Any state or local correctional facility.

4 (iv) Any private security company licensed to do business in
5 California.

6 (v) Any person who is properly identified as a full-time paid
7 peace officer, as defined in Chapter 4.5 (commencing with Section
8 830) of Title 3 of Part 2, and who is authorized to, and does carry
9 a firearm during the course and scope of his or her employment
10 as a peace officer.

11 (vi) Any motion picture, television, or video production
12 company or entertainment or theatrical company whose production
13 by its nature involves the use of a firearm.

14 (vii) Any person who may, pursuant to Section 12078, claim
15 an exemption from the waiting period set forth in subdivision (c)
16 of this section.

17 (viii) Any transaction conducted through a licensed firearms
18 dealer pursuant to Section 12082.

19 (ix) Any person who is licensed as a collector pursuant to
20 Chapter 44 (commencing with Section 921) of Title 18 of the
21 United States Code and the regulations issued pursuant thereto
22 and who has a current certificate of eligibility issued to him or her
23 by the Department of Justice pursuant to Section 12071.

24 (x) The exchange of a handgun where the dealer purchased that
25 firearm from the person seeking the exchange within the 30-day
26 period immediately preceding the date of exchange or replacement.

27 (xi) The replacement of a handgun when the person's handgun
28 was lost or stolen, and the person reported that firearm lost or
29 stolen prior to the completion of the application to purchase to any
30 local law enforcement agency of the city, county, or city and county
31 in which he or she resides.

32 (xii) The return of any handgun to its owner.

33 (xiii) Community colleges that are certified by the Commission
34 on Peace Officer Standards and Training to present the law
35 enforcement academy basic course or other commission-certified
36 law enforcement training.

37 (b) No person licensed under Section 12071 shall supply, sell,
38 deliver, or give possession or control of a handgun to any person
39 under the age of 21 years or any other firearm to a person under
40 the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.

(5) (A) Commencing April 1, 1994, and until January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the handgun presents a handgun safety certificate to the dealer.

(6) No handgun shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a handgun and that the previous application to purchase involved none of the entities specified in subparagraph (B) of paragraph (9) of subdivision (a).

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through a licensed firearms dealer pursuant to Section 12082.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to firearms safety.

(2) Knowingly grading the examination falsely.

1 (3) Providing an advance copy of the test to an applicant.

2 (4) Taking or allowing another person to take the basic firearms
3 safety course for one who is the applicant for a basic firearms
4 safety certificate or a handgun safety certificate.

5 (5) Allowing another to take the objective test for the applicant,
6 purchaser, or transferee.

7 (6) Using or allowing another to use one's identification, proof
8 of residency, or thumbprint.

9 (7) Allowing others to give unauthorized assistance during the
10 examination.

11 (8) Reference to unauthorized materials during the examination
12 and cheating by the applicant.

13 (9) Providing originals or photocopies of the objective test, or
14 any version thereof, to any person other than as authorized by the
15 department.

16 (f) (1) (A) Commencing July 1, 2008, a person who is licensed
17 pursuant to Chapter 44 (commencing with Section 921) of Title
18 18 of the United States Code may not deliver, sell, or transfer a
19 firearm to a person in California who is licensed pursuant to
20 Chapter 44 (commencing with Section 921) of Title 18 of the
21 United States Code unless, prior to delivery, the person intending
22 to deliver, sell, or transfer the firearm obtains a verification number
23 via the Internet for the intended delivery, sale, or transfer, from
24 the department. If Internet service is unavailable to either the
25 department or the licensee due to a technical or other malfunction,
26 or a federal firearms licensee who is located outside of California
27 does not possess a computer or have Internet access, alternate
28 means of communication, including facsimile or telephone, shall
29 be made available for a licensee to obtain a verification number
30 in order to comply with this section.

31 (B) For every verification number request received pursuant to
32 this section, the department shall determine whether the intended
33 recipient is on the centralized list of firearms dealers pursuant to
34 this section, or the centralized list of exempted federal firearms
35 licensees pursuant to subdivision (a) of Section 12083, or the
36 centralized list of firearms manufacturers pursuant to subdivision
37 (f) of Section 12086.

38 (C) If the department finds after the reviews specified in
39 subparagraph (B) that the intended recipient is authorized to receive
40 the firearm shipment, the department shall issue to the inquiring

1 party a unique verification number for the intended delivery, sale,
2 or transfer. One verification number shall be issued for each
3 delivery, sale, or transfer, which may involve multiple firearms.
4 In addition to the unique verification number, the department may
5 provide to the inquiring party information necessary for
6 determining the eligibility of the intended recipient to receive the
7 firearm. The person intending to deliver, sell, or transfer the firearm
8 shall provide the unique verification number to the recipient along
9 with the firearm upon delivery, in a manner to be determined by
10 the department.

11 (D) If the department finds after the reviews specified in
12 subparagraph (B) that the intended recipient is not authorized to
13 receive the firearm shipment, the department shall notify the
14 inquiring party that the intended recipient is ineligible to receive
15 the shipment.

16 (E) The department shall prescribe the manner in which the
17 verification numbers may be requested via the Internet, or by
18 alternate means of communication, such as by facsimile or
19 telephone, including all required enrollment information and
20 procedures.

21 (2) (A) On or after January 1, 1998, within 60 days of bringing
22 a handgun into this state, a personal handgun importer shall do
23 one of the following:

24 (i) Forward by prepaid mail or deliver in person to the
25 Department of Justice, a report prescribed by the department
26 including information concerning that individual and a description
27 of the firearm in question.

28 (ii) Sell or transfer the firearm in accordance with the provisions
29 of subdivision (d) or in accordance with the provisions of an
30 exemption from subdivision (d).

31 (iii) Sell or transfer the firearm to a dealer licensed pursuant to
32 Section 12071.

33 (iv) Sell or transfer the firearm to a sheriff or police department.

34 (B) If the personal handgun importer sells or transfers the
35 handgun pursuant to subdivision (d) of Section 12072 and the sale
36 or transfer cannot be completed by the dealer to the purchaser or
37 transferee, and the firearm can be returned to the personal handgun
38 importer, the personal handgun importer shall have complied with
39 the provisions of this paragraph.

1 (C) The provisions of this paragraph are cumulative and shall
2 not be construed as restricting the application of any other law.
3 However, an act or omission punishable in different ways by this
4 section and different provisions of the Penal Code shall not be
5 punished under more than one provision.

6 (D) (i) On and after January 1, 1998, the department shall
7 conduct a public education and notification program regarding this
8 paragraph to ensure a high degree of publicity of the provisions
9 of this paragraph.

10 (ii) As part of the public education and notification program
11 described in this subparagraph, the department shall do all of the
12 following:

13 (I) Work in conjunction with the Department of Motor Vehicles
14 to ensure that any person who is subject to this paragraph is advised
15 of the provisions of this paragraph, and provided with blank copies
16 of the report described in clause (i) of subparagraph (A) at the time
17 that person applies for a California driver's license or registers his
18 or her motor vehicle in accordance with the Vehicle Code.

19 (II) Make the reports referred to in clause (i) of subparagraph
20 (A) available to dealers licensed pursuant to Section 12071.

21 (III) Make the reports referred to in clause (i) of subparagraph
22 (A) available to law enforcement agencies.

23 (IV) Make persons subject to the provisions of this paragraph
24 aware of the fact that reports referred to in clause (i) of
25 subparagraph (A) may be completed at either the licensed premises
26 of dealers licensed pursuant to Section 12071 or at law enforcement
27 agencies, that it is advisable to do so for the sake of accuracy and
28 completeness of the reports, that prior to transporting a handgun
29 to a law enforcement agency in order to comply with subparagraph
30 (A), the person should give prior notice to the law enforcement
31 agency that he or she is doing so, and that in any event, the handgun
32 should be transported unloaded and in a locked container.

33 (iii) Any costs incurred by the department to implement this
34 paragraph shall be absorbed by the department within its existing
35 budget and the fees in the Dealers' Record of Sale Special Account
36 allocated for implementation of this subparagraph pursuant to
37 Section 12076.

38 (3) Where a person who is licensed as a collector pursuant to
39 Chapter 44 (commencing with Section 921) of Title 18 of the
40 United States Code and the regulations issued pursuant thereto,

1 whose licensed premises are within this state, acquires a handgun
2 that is a curio or relic, as defined in Section 478.11 of Title 27 of
3 the Code of Federal Regulations, outside of this state, takes actual
4 possession of that firearm outside of this state pursuant to the
5 provisions of subsection (j) of Section 923 of Title 18 of the United
6 States Code, as amended by Public Law 104-208, and transports
7 that firearm into this state, within five days of that licensed
8 collector transporting that firearm into this state, he or she shall
9 report to the department in a format prescribed by the department
10 his or her acquisition of that firearm.

11 (4) (A) It is the intent of the Legislature that a violation of
12 paragraph (2) or (3) shall not constitute a “continuing offense” and
13 the statute of limitations for commencing a prosecution for a
14 violation of paragraph (2) or (3) commences on the date that the
15 applicable grace period specified in paragraph (2) or (3) expires.

16 (B) Paragraphs (2) and (3) shall not apply to a person who
17 reports his or her ownership of a handgun after the applicable grace
18 period specified in paragraph (2) or (3) expires if evidence of that
19 violation arises only as the result of the person submitting the
20 report described in paragraph (2) or (3).

21 (g) (1) Except as provided in paragraph (2), (3), or (5), a
22 violation of this section is a misdemeanor.

23 (2) If any of the following circumstances apply, a violation of
24 this section is punishable by imprisonment in the state prison for
25 two, three, or four years.

26 (A) If the violation is of paragraph (1) of subdivision (a).

27 (B) If the defendant has a prior conviction of violating the
28 provisions, other than paragraph (9) of subdivision (a), of this
29 section or former Section 12100 of this code or Section 8101 of
30 the Welfare and Institutions Code.

31 (C) If the defendant has a prior conviction of violating any
32 offense specified in subdivision (b) of Section 12021.1 or of a
33 violation of Section 12020, 12220, or 12520, or of former Section
34 12560.

35 (D) If the defendant is in a prohibited class described in Section
36 12021 or 12021.1 of this code or Section 8100 or 8103 of the
37 Welfare and Institutions Code.

38 (E) A violation of this section by a person who actively
39 participates in a “criminal street gang” as defined in Section 186.22.

1 (F) A violation of subdivision (b) involving the delivery of any
2 firearm to a person who the dealer knows, or should know, is a
3 minor.

4 (3) If any of the following circumstances apply, a violation of
5 this section shall be punished by imprisonment in a county jail not
6 exceeding one year or in the state prison, or by a fine not to exceed
7 one thousand dollars (\$1,000), or by both that fine and
8 imprisonment.

9 (A) A violation of paragraph (2), (4), or (5) of subdivision (a).

10 (B) A violation of paragraph (3) of subdivision (a) involving
11 the sale, loan, or transfer of a handgun to a minor.

12 (C) A violation of subdivision (b) involving the delivery of a
13 handgun.

14 (D) A violation of paragraph (1), (3), (4), (5), or (6) of
15 subdivision (c) involving a ~~pistol, revolver, or other firearm capable~~
16 ~~of being concealed upon the person~~ *handgun*.

17 (E) A violation of subdivision (d) involving a handgun.

18 (F) A violation of subdivision (e).

19 (4) If both of the following circumstances apply, an additional
20 term of imprisonment in the state prison for one, two, or three
21 years shall be imposed in addition and consecutive to the sentence
22 prescribed.

23 (A) A violation of paragraph (2) of subdivision (a) or subdivision
24 (b).

25 (B) The firearm transferred in violation of paragraph (2) of
26 subdivision (a) or subdivision (b) is used in the subsequent
27 commission of a felony for which a conviction is obtained and the
28 prescribed sentence is imposed.

29 (5) (A) A first violation of paragraph (9) of subdivision (a) is
30 an infraction punishable by a fine of fifty dollars (\$50).

31 (B) A second violation of paragraph (9) of subdivision (a) is an
32 infraction punishable by a fine of one hundred dollars (\$100).

33 (C) A third or subsequent violation of paragraph (9) of
34 subdivision (a) is a misdemeanor.

35 (D) For purposes of this paragraph each application to purchase
36 a handgun in violation of paragraph (9) of subdivision (a) shall be
37 deemed a separate offense.